

**DURHAM, NORTH CAROLINA
MONDAY, JUNE 5, 2006
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Absent: None.

Also present: City Manager Patrick Baker, City Attorney Henry Blinder, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Pro Tempore Cole-McFadden called the meeting to order with a moment of silent meditation and the Pledge of Allegiance led by Council Member Clement. Also she announced that the Mayor is on his way to the meeting.

Mayor Pro Tempore Cole-McFadden presented Jane Agee with a certificate and proclamation for her 17 years of outstanding service on the Durham Cable Television Advisory Board.

Council Member Woodard presented Corporal David Addison with the outstanding Public Servant of North Carolina award.

Mayor Pro Tempore Cole-McFadden made comments on the incoming Durham Youth Council.

City Clerk Gray swore in the following members of 2006-07 Durham Youth Council:

Sydney Brunson	Zasha Cannady
Alexander Catotti	Marianna Coles-Curtis
Diondra Cooper	Kristen Daniels
Byrana Davis	Tiffani Daye
Terry DeShazo	Hannah Falgout
Alessandra Ferguson	Pateryl Hargett
Benjamin Holt	Ablessin Hope
Mykia Johnson	Carmen Jones
Krystin McCauley	Imari Nkenge-Hinds
Leslie Ogden	Angelica Powell
Precious Powell	Jalisha Richmond
Caleb Smith	Kendra Smith
Nedra Snipes	Jeffrey Sullivan
Erin Turner	Briani Weeks
Valentine Williamson	Treyvon Spence

June 5, 2006

Mayor Pro Tempore Cole-McFadden asked the City Manager, City Attorney and City Clerk for priority items. City Manager Baker requested that an item be added to the agenda: Resolution Opposing Loop Funding. Also, he congratulated Bruce Pagan as the new Fire Chief.

MOTION by Council Member Clement seconded by Council Member Catotti to approve the City Manager's priority items was approved at 7:16 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

There were no priority items from the City Attorney and City Clerk.

Council Member Clement thanked Mallarme Chamber Players for their rendition in the lobby area and for their performance over the years, announced that he attended the Hillside High School Summit, commended Hillside and Southern High School students who spoke up in behalf of their respective school regarding the issue of closure. Finally, he congratulated Larry Hall on winning the 29th District Seat as a Durham Representative.

Council Member Catotti congratulated the Senior Center on their grand opening on May 19, the Durham Appearance Commission for their very successful Golden Leaf Appearance Award, Duke/Durham Neighborhood Partnership on celebrating their fundraising campaign, Urban Ministries Center renovation.

Council Member Woodard congratulated Robert Faggart with Project Safe Neighborhood and other members of the Police Department for conducting a successful Hoopin' Up Hope Basketball Tournament and thanked North Carolina Central University's Athletic Department for loaning its facility for this program; attended the 40th Anniversary of the Durham Exchange Club Industries and the Urban Ministries expansion event.

Mayor Pro Tempore Cole-McFadden congratulated Robert Faggart and Yvonne Gilyard on the Hoopin' Up Hope Basketball Tournament and thanked Darryl Crittendon and staff for little league baseball closing ceremony and the ARC of Durham on their annual membership meeting and awards banquet where Jeff Ford of Parks & Recreation was honored.

Council Member Clement asked the City Manager to add to the June 8, 2006 City Council Work Session agenda an item concerning Susan Breed – DATA Board.

Mayor Pro Tempore Cole-McFadden asked if any citizen(s) or council member(s) wanted to pull any items from the Consent Agenda. No items were pulled from the Consent Agenda.

MOTION by Council Member Stith seconded by Council Member Woodard to approve the Consent Agenda was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

[CONSENT AGENDA]

June 5, 2006

SUBJECT: PARKS AND RECREATION FEE WAIVER FINANCIAL AUDIT (APRIL 2006)

MOTION by Council Member Stith seconded by Council Member Woodard to receive and accept the Parks and Recreation Fee Waiver Financial Audit (April 2006) as approved at the April 24, 2006 meeting of the Audit Services Oversight Committee was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

SUBJECT: VOLUNTARY ANNEXATION PETITIONS RECEIVED BY JANUARY 1, 2006

MOTION by Council Member Stith seconded by Council Member Woodard to adopt resolutions scheduling public hearings for Monday, June 19, 2006 to receive citizen comments concerning voluntary petitions for the following properties to be annexed with a recommended effective date of June 30, 2006 was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

- a) FY2006-07 Greenfield
- b) FY2006-09 Ellington Place
- c) FY2006-12 State Employees Credit Union – East Durham

Resolution #9358 – 9359 - 9360

SUBJECT: APPROVAL OF CITY COUNCIL MINUTES

MOTION by Council Member Stith seconded by Council Member Woodard to approve City Council minutes for the following meetings; and

April 3, 2006 - Regular Meeting
April 17, 2006 - Regular Meeting

To approve City Council action taken at the following Work Sessions was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

March 23, 2006
April 6, 2006
April 20, 2006

SUBJECT: CULTURAL MASTER PLAN ADVISORY BOARD - APPOINTMENT

June 5, 2006

MOTION by Council Member Stith seconded by Council Member Woodard to appoint Tamara Loza to fill one (1) vacancy on the Cultural Master Plan Advisory Board with a term expiring on June 30, 2007 was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

SUBJECT: RENTAL CONTRACT FOR MULTI-FUNCTION PRINT DEVICES - TRI BUSINESS SOLUTIONS

MOTION by Council Member Stith seconded by Council Member Woodard to accept the proposal from Tri Business Solutions, in the estimated amount of \$542,388 (\$0.0243 per black & white copy and \$0.065 per color copy), for providing the City with Multi-Function Print Devices;

To authorize the City Manager to enter into a contract with Tri Business Solutions, in the estimated amount of \$542,388 (\$0.0243 per black & white copy and \$0.065 per color copy), for providing the City with Multi-Function Print Devices; and

To authorize the City Manager to modify the contract before execution provided that modifications do not increase the estimated dollar amount of the contract and the modifications are consistent with the general intent of the existing version of the contract was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

SUBJECT: CONTRACT FOR APPROVAL OF EXTERNAL AUDITOR - MCGLADREY & PULLEN

MOTION by Council Member Stith seconded by Council Member Woodard to authorize the City Manager to execute a contract with McGladrey & Pullen at a cost of between \$63,000 and \$90,000 to provide audit services to the City of Durham for the fiscal year ending June 30, 2006; and

To authorize the City Manager to modify the contract before execution provided that modifications do not increase the estimated dollar amount of the contract and the modifications are consistent with the general intent of the existing version of the contract was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

SUBJECT: FISCAL YEAR 2005-06 BUDGET AMENDMENTS

June 5, 2006

MOTION by Council Member Stith seconded by Council Member Woodard to adopt an Ordinance Amending the FY2005-06 City of Durham Budget Ordinance, the same being ordinance 13117 was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

Ordinance #13262

SUBJECT: PROPOSED SALE OF PROPERTY AT MARTIN LUTHER KING, JR. PARKWAY PARCEL ID #155783 (PIN# 739-01-05-2521) - CLARENCE ALLEN

MOTION by Council Member Stith seconded by Council Member Woodard to declare Parcel ID #155783 as surplus; and

To reject the non-responsive offer of \$20,000 from Clarence Allen to purchase Parcel ID #155783 and direct the City Manager to continue marketing the property was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

SUBJECT: LAND LEASE AGREEMENT BETWEEN THE CITY OF DURHAM AND NEW CINGULAR WIRELESS PCS, LLC – FARRINGTON ROAD SOUTH DURHAM WATER RECLAMATION PLANT, Parcel ID #141733

MOTION by Council Member Stith seconded by Council Member Woodard to authorize the City Manager to execute the ten-year Lease Agreement with New Cingular Wireless PCS, LLC to lease property at Parcel #141733 – Farrington Road; and

To authorize the City Manager to make changes to the Lease, prior to execution, provided such changes do not materially affect the intent and purpose of the Lease and agenda memo was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

SUBJECT: PROPOSED SALE OF PROPERTY AT 909 CLEVELAND STREET CITY TRACT # 1656 - PARCEL ID #110412 - KELLY DENICE WHITLEY DE PADILLA

MOTION by Council Member Stith seconded by Council Member Woodard to declare City Tract # 1656 as surplus;

June 5, 2006

To accept the offer of \$100 from Kelly Denise Whitley de Padilla to purchase City Tract # 1656 (Parcel 110412) provided Mr. and Mrs. Padilla pay all recording and document preparation fees; and

To authorize the City Manager to sell and the Mayor to convey the property with a non-warranty deed, under the authority of Section 86 of the City Charter was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

SUBJECT: CONTRACT AMENDMENT FOR ADDITIONAL PROFESSIONAL SERVICES FOR C. M. HERNDON PARK - LAPPAS + HAVENER, PA

MOTION by Council Member Stith seconded by Council Member Woodard to authorize the City Manager to amend the Lappas + Havener, PA contract to pay \$1,500 for ceiling design services and to authorize the City Manager to authorize the Architect to provide additional services in an amount not-to-exceed \$40,000;

To authorize the City Manager to modify the agreement before execution provided the modifications do not increase the dollar amount of the agreement, and the modifications are consistent with the general intent of the existing version was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

SUBJECT: ON-CALL VENDORS LIST FOR TRAINERS AND BUSINESS CONSULTANTS

MOTION by Council Member Stith seconded by Council Member Woodard to approve the on-call vendors' list for trainers and professional business consultants who have met the requirements to transact business with the City of Durham was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

Workforce Enrichment, Inc Gregory Nash 3737 Glenwood Ave, Suite 100 Raleigh, NC 27612	X	X	X	X	Mediation Business Coaching
Milton Lewis and Assocs. Milton Lewis P. O. Box 2221 Chapel Hill, NC 27515	X	X			Mediation Conflict Resolution Negotiation Customer Service

June 5, 2006

Dalar International Consultancy Birgitt Williams PO Box 19373 Raleigh, NC 27619	X	X	X	X	Meetings and Retreat facilitation Conflict Resolution High Level Executive Coaching
Strategic Innovations, Inc Jeffrey Causey 1905 Elmwood Dr Graham, NC 27515	X	X	X	X	Problem Resolution Relationship Management Business Coaching
ARI (American Research Institute) George Proudfoot 701 Corporate Center Dr., Suite 175 Raleigh, NC 27604-5084	X	X	X	X	Leadership Communications Conflict Management
Albion Associates, Inc Louis Martin 6145 N. Sheridan Rd., Suite 20B Chicago, IL 60660	X	X			Mediation
Millennium Associates, LLC Margaret Porter 106 Majnun Lane Cary, NC 27513	X	X	X	X	Business Coaching and consulting
Jonathan Ross 207 N. Church Durham, NC 27701	X	X	X	X	
Roberts Eastman & Associates, LLC Joan Roberts Eastman 6713 Falconbridge Rd Chapel Hill, NC 27517	X	X	X	X	Mediation, Project Management, Conflict Resolution, Performance Management, Problem Solving
E.A. Page Consulting, LLC Emily Page 202 NC Highway 54, Suite 101, Box 4G Durham, NC 27713	X	X	X	X	Business Coaching and Mentoring, Mediation
Brainard Consulting, LLC Carol A. Brainard 2828 Montgomery Street Durham, NC 27705	X	X	X	X	Mediation, Business Coaching, Conflict Resolution Adult Learning Programs
Gail M. Hayes, Ph.D.					Coaching and

June 5, 2006

Destiny and Image Strategist Durham, NC 27701	X	X	X	X	Mentoring, Mediation
Richardson & Associates Consulting, LLC Alfred Richardson 2639 Umstead Rd Durham, NC 27712	X	X	X	X	Conflict Resolution, Performance Coaching, Career Coaching, Personal Coaching, Effective communication, Strategic Planning Mediation
Brown, Buckley Tucker Associates Deb Brown 52 Green Hill Parkway Brattleboro, VT 05301	X	X	X	X	
Karen Tax & Associates Karen Tax 207 River Birch Lane Chapel Hill, NC 27514	X	X	X	X	Mediation Business Coaching, Mediation, IAM Self-Awareness Training, IAM Career Training, IAM Communications Training
Noeben Translation Services, Inc Marlene Benoit 2530 Meridian Parkway, suite 300 Research Triangle Park, NC 27713	X				Spanish classes
Parton Consulting, LLC John Parton 118 West Lynch Street Durham, NC 27701-1930	X	X		X	Business Coaching
HOPS International, Human & Organizational Performance System Charles T. Walsh 11 Sleepy Hollow Cove Longwood, Florida 32750	X	X	X	X	Executive & Management Retreats Experiential Adventure Learning Programs MBTI Situational Leadership Training

**SUBJECT: TEMPORARY CONSTRUCTION EASEMENT FOR GOOSE CREEK
STREAM RESTORATION PROJECT FROM EASTWAY ELEMENTARY
TO LIBERTY STREET**

June 5, 2006

MOTION by Council Member Stith seconded by Council Member Woodard to authorize the Mayor to execute the temporary construction easement for the Goose Creek stream restoration project;

To authorize the Mayor to make modifications to the temporary construction easement provided the modifications do not increase the dollar amount of the easement and are consistent with the general intent of the easement approved by the City Council; and

To authorize the Mayor to execute the follow-up conservation easement deed, by which the easement will be conveyed to the state, provided the material terms and conditions of such deed are substantially similar to those of previous conservation easements conveyed by the City to the State of North Carolina through the North Carolina Ecosystem Enhancement program was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

**SUBJECT: TEMPORARY CONSTRUCTION EASEMENT FOR GOOSE CREEK
STREAM RESTORATION PROJECT IN LONG MEADOW PARK**

MOTION by Council Member Stith seconded by Council Member Woodard to authorize the Mayor to execute the temporary construction easement for the Goose Creek stream restoration project;

To authorize the Mayor to make modifications to the temporary construction easement provided the modifications do not increase the dollar amount of the easement and are consistent with the general intent of the easement approved by the City Council; and

To authorize the Mayor to execute the follow-up conservation easement deed, by which the easement will be conveyed to the state, provided the material terms and conditions of such deed are substantially similar to those of previous conservation easements conveyed by the City to the State of North Carolina through the North Carolina Ecosystem Enhancement program was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent at time of Vote: Mayor Bell.

**SUBJECT: SOLID WASTE ENFORCEMENT CODE AMENDMENTS AND FEE
RESOLUTION**

MOTION by Council Member Stith seconded by Council Member Woodard to adopt an ordinance amending Chapter 10 of the Durham City Code to provide comprehensive authority for remediation and civil enforcement; and

To adopt the proposed remedial fee resolution setting a standard fee for violation of Chapter 10 and Department rules was approved at 7:30 p.m. by the following vote: Ayes: Mayor Pro

June 5, 2006

Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard.
Noes: None. Absent at time of Vote: Mayor Bell.

Ordinance #13263

Resolution #9361

SUBJECT: DURHAM ARTS COUNCIL

To receive an Update on the Durham Arts Council.

Note: A presentation was received at the May 18, 2006 Work Session.

SUBJECT: PROJECT SAFE NEIGHBORHOODS FIRST QUARTER 2006 REPORT

To receive the Project Safe Neighborhoods First Quarter 2006 Report.

Note: This item was deferred to the June 8, 2006 Work Session.

SUBJECT: ZONING MAP CHANGE – HARMONY ROAD - (Z05-32)

To conduct a public hearing and receive public comments on the zoning map change for Harmony Road (Z05-32);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change Case Z05-32 out of RS-20 and RS-10; F/J-B and placing same in and establishing same as PDR 2.710;

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented at the public hearing and in the accompanying agenda materials; and

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Planning Commission Recommendation and Vote: Approval, 8-5 on April 11, 2006, based on consistency with the Comprehensive Plan and considering the information in the staff report and testimony provided at the public hearing.

Note: This item was deferred to the June 19, 2006 City Council Meeting.

June 5, 2006

SUBJECT: ZONING MAP CHANGE - 2303 COOK ROAD (Z06-13)

To conduct a public hearing and receive public comments on the zoning map change for 2303 Cook Road (Z06-13);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change Case Z06-13 out of RS-20 and placing same in and establishing same as RS-10;

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented at the public hearing and in the accompanying agenda materials; and

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Planning Department Recommendation: Approval, based on consistency with the Comprehensive Plan and considering the information contained in this report.

Planning Commission Recommendation and Vote: Denial 12-0 on April 11, 2006, based on finding that the use is inconsistent with neighboring uses, the presence of significant opposition from the community, the lack of a development plan submittal and considering the information in the staff report and comments received during the public hearing.

Note: This item was deferred to the August 7, 2006 City Council Meeting.

SUBJECT: ZONING MAP CHANGE – STATE EMPLOYEES CREDIT UNION - (Z06-03)

To conduct a public hearing and receive public comments on the zoning map change for the State Employees Credit Union (Z06-03);

To adopt an ordinance amending the Unified Development Ordinance, the same being Chapter 24 of the Durham City Code, by taking the described property in zoning map change Case Z06-03 out of RS-20; E-B and placing same in and establishing same as OI(D); E-B;

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in

June 5, 2006

light of information presented at the public hearing and in the accompanying agenda materials;
and

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Planning Department Recommendation: Approval, based on consistency with the Comprehensive Plan and considering the information contained in this report.

Planning Commission Recommendation and Vote: Approval, 10-2 on April 11, 2006, based on consistency with the Comprehensive Plan and considering the information in the staff report and testimony provided at the public hearing.

Note: This item was deferred to the June 19, 2006 City Council Meeting.

SUBJECT: NEW EAST DURHAM

To receive comments from Vivian McCoy regarding community issues.

Note: Comments were received at the May 18, 2006 Work Session.

SUBJECT: GRASSROOTS IMPEACHMENT MOVEMENT (GRIM)

To receive comments from David Sokal regarding Impeachment of Bush and Cheney.

Note: Comments were received at the May 18, 2006 Work Session.

SUBJECT: AMEND THEATER LEGISLATIVE

To request an amendment to the Durham Occupancy Tax legislation to extend the deadline for approval of the financing plan and to begin construction of the performing arts theater for a period of 10 months.

Note: The item was approved at the May 18, 2006 Work Session with a vote of 7/0.

[GENERAL BUSINESS AGENDA]

SUBJECT: SYNTHETIC FIXED RATE REFINANCING – REVISED TRANSACTION

June 5, 2006

To adopt a Resolution authorizing the approval of an Interest Rate Exchange Agreement with respect to certain of the City's general obligation bonds and providing for certain other related matters.

Ralph McKinney made comments noting if Council is interesting in getting a reputable business do it through an advertising procedure, get people that are able to get AAA, find an avenue where you don't have tax and steal of taxpayers money and urged Council to reject this opportunity.

Joseph Collie, of Selkirk Street, asked several questions regarding this item [what is the minimum savings, what bids have been put out for this service, is there any contract with any other client] and asked Council to do its due diligence before voting on this item.

Finance Director Ken Pennoyer responded to some of the questions raised by Mr. Collie.

Council Member Brown made comments expressing concern regarding the swap transaction noting that this item was not sent out for a competitive bid and the taxpayers would like to know answers to the following questions: why staff didn't engage in a competitive bid on this \$108 million swap transaction, what is Rice going to charge the City and what are the fees for Rice Financial, PFM and the two legal firms--our bond counsel.

Finance Director Ken Pennoyer noted based on the fair market price, Rice Financial will earn over the life of the transaction approximately \$700,000. He referenced the following fees: PFM 100,000 and bond counsel total \$40,000 (Parker Poe and Banks). He explained the issue of basis points, and stated the City's expected savings on the transaction is 4 %.

Council Member Brown noted this transaction is not worth doing due to the cost and risks involved with the swap transaction. He asked staff what will be the basis points profits for Rice.

Finance Director Ken Pennoyer noted the basis points profits would be determined at execution and the estimation of \$700,000 is based on approximately ten basis points.

Council Member Brown asked staff how will PFM get paid.

Finance Director Ken Pennoyer stated by the City at the execution of the transaction.

After discussion on how PFM will get paid, Council Member Brown raised a concern that there appears to be a conflict of interest.

Council Member Catotti read a statement expressing concern about this proposed swap transaction. She noted she would be voting against this item because the potential loss to the City could be huge with rising interest rates and changes in tax policy; stated the potential savings--\$3 or \$4 million--over 15 years is not enough to outweigh the risk of losing more than \$10 million. Durham should not be refinancing our debt and jeopardizing our good bond rating on these odds. She urged her colleagues to vote against this item, or postpone any action on this agreement.

June 5, 2006

Council Member Stith asked questions that staff addressed relating to the following: staff's review of this item, the City's bond rating, expertise of PFM, bond counsel and the LGC; other cities that have entered into a similar deal relative to a swap transaction, no bid instances that have been used by the City and what would happen if given approval tonight.

Finance Director Ken Pennoyer noted if Council approves this item tonight there is one additional step which requires approval from the Local Government Commission and at that point the City would be free to execute the transaction once we achieve the 4 % expected savings on the transaction. He commented there is a potential to execute it even if it doesn't reach 4 % of the entire transaction.

Council Member Stith asked staff is the lockbox still a part of this scenario on projected savings.

Finance Director Ken Pennoyer replied yes.

Regarding the County's experience, Finance Director Ken Pennoyer noted they have earned approximately half of expected savings.

Mayor Pro Tempore Cole-McFadden asked staff if the theatre project was not initially bided out.

Economic Development Director Alan DeLisle noted initially staff narrowed it down to two firms that were sent the initial RFP.

Council Member Clement made comments in support of this item. He noted Council should authorize the City Manager to proceed with this transaction.

Council Member Brown made comments on the West Basin lawsuit against Rice Financial and setting standards for vendors. He noted Council should not be engaged with a firm and we find out in upcoming months that they will be fined or convicted. He asked staff what happens if Rice Financial is convicted of bribery and how can deal be terminated.

Finance Director Ken Pennoyer noted in the documents, the City has the ability to terminate at its option and would pay the termination payment based on the evaluation of the swap at that point in time.

Council Member Brown urged his colleagues to think through this matter and that he would be voting against this item.

Council Member Stith made comments on the issue of fiscal responsibility and integrity concerning all contractors.

MOTION by Council Member Clement seconded by Council Member Stith to adopt a Resolution authorizing the approval of an Interest Rate Exchange Agreement with respect to certain of the City's general obligation bonds and providing for certain other related matters; and

June 5, 2006

To authorize the City Manager to proceed to implement this transaction was approved at 8:15 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Clement, Stith and Woodard. Noes: Council Members Brown and Catotti. Absent: None.

Resolution #9362

[GENERAL BUSINESS AGENDA – PUBLIC HEARINGS]

SUBJECT: PUBLIC HEARING ON PROPOSED FY 2006-2007 BUDGET AND PROPOSED FY 2007-2012 CAPITAL IMPROVEMENT PLAN

To receive public comments on the proposed FY 2006-2007 budget and proposed FY 2007-2012 Capital Improvement Plan and related fee schedules.

Mayor Bell opened the public hearing.

Charlotte Woods, of 2617 Augusta Drive, asked the City Council to take care of the money that they already have. She expressed concern relative to the garbage situation, non collection of water and sewer assessment, and the empty DATA buses riding around the City. She noted an additional \$80 will provide hardship for the elderly and those making \$20,000 - \$30,000, urged Council to place a 1% moratorium on salaries over \$100,000, and asked for an across the board audit—forensic audit.

Larry Hester, of 3526 Abercromby Drive, asked Council to make the Fayetteville Street corridor a priority for existing stakeholders in this historic area of the city. He made comments on the Rolling Hills project, Fayetteville Street Planning Group, funding provided to downtown projects, and the Fayetteville Street plan.

Delores Eaton, of 126 Masondale Avenue, noted the Fayetteville Street Group has made approximately 60 attempts over a 15-month period to petition the City Council to help restore our neighborhoods that surrounded the Black Wall Street area. She made comments on the request for \$25 million for infrastructure improvements, meetings that she had with City Council and the City Manager. She urged Council to fund the Fayetteville Street Plan and make the Fayetteville Street Corridor and surrounding neighborhoods a priority.

Aljeuron Williams, of 129 Masondale Avenue, urged Council to support funding for the inner-city and not for the downtown area only.

Bill Kalkhof, representing the DDI, spoke in support of a 1% increase in funding for the Downtown Revitalization Fund.

Earl Boone, of 2628 Melrose Avenue, requested funding for Durham TRY.

June 5, 2006

Wanda Boone, of 2628 Melrose Avenue, made comments in support of funding for Durham TRY and outlined what programs are being offered.

Frank Davis, of 309 Rippling Stream, expressed concern with the cut in funding for the Durham Striders.

Jodee Nimerichter raised a concern with the recommended cut in funding for the American Dance Festival. She urged Council to restore the funding to the level of last year.

Grace Marsh spoke in support of funding for the Elna B. Spaulding Mediation Center.

John Parker, of 115 Market Street, thanked Council for the preliminary non-city agency funding for Good Work.

Anna Wilson, 120 Morris Street, thanked Council for their support, made comments expressing concern with reduced funding for Mallarme Chamber Players and urged Council to revisit and increase funding to the level of last year.

Hope Taylor-Guevara spoke in support of funding for Clean Water NC.

John Compton raised concern with 10% cut in funding for the Historic Preservation Society and urged Council to support the full allocation.

Ralph McKinney, of 3104 Winston Place, urged Council to help establish leadership please.

Stella Autry spoke in support of funding for Durham Companions. She urged Council to revisit request for funding since \$5,000 is not enough to serve a waiting list of 34 children.

Ann Woodard, of 1202 N. Mangum Street, urged Council to support funding for The Scrap Exchange.

Jimmy Green, of 2800 Bainbridge Dr, spoke in support of funding for The Scrap Exchange.

Cathy Kielar, of 5317 Pelham Road, made comments urging Council to support funding for The Scrap Exchange.

Adelaide Banks, of 1415 Holloway Street, spoke in support of funding for the Read/Seed.

John Lloyd spoke in opposition to tax increases in the budget.

Victoria Peterson asked Council to support funding for Triangle Citizens Rebuilding Communities.

Phyllis Coley, of 2206 S. Alston Avenue, urged Council to reconsider funding the Triangle Culture Awareness Foundation.

June 5, 2006

Dr. Archie Logan, of 5104 Revere Road, requested Council to support funding for Triangle Culture Awareness Foundation.

Sharon Elliot-Bynum, of 105 Chancellor Ridge Road, spoke in support of funding for Triangle Culture Awareness Foundation.

Claudette Whitley, of 2614 Harvard Avenue, spoke in support of funding to revitalize the Northeast Central Durham area and to pave dirt streets at the entrance to our City.

Lugenia Mason, of 122 Omega Road, spoke in support of basketball goals for older children in the River Forest Neighborhood.

Valjeanne Jones-Williams, of 1925 Cecil Street, made comments on the master plan for the Fayetteville Street corridor, expressed concern that there is no evidence of any project on Fayetteville Street or plan from the City Manager. She urged Council to support funding in this year's budget and in the capital improvement plan to address capital needs/economic revitalization on Fayetteville Street.

Rev. Cornelius Battle urged Council to find a way to support funding for the Fayetteville Street corridor and surrounding neighborhoods.

Sheryl Smith made comments on the issues of crime and safety.

Preston Barnes, of 122 Nelson Street, noted he supports funding for improvements along Fayetteville Street.

Denise Hester, of 3526 Abercromby Drive, asked Council to adopt and fund the Fayetteville Street Plan with a priority equal to the commitment to downtown for the existing residents/businesses that maintain a presence along the historical corridor for over 100 years. She expressed concern that the area is still waiting for a third police officer that was approved by the City Council in 2001 and new sidewalks from Umstead to Nelson, which was promised in 2002. She urged Council to enhance the business growth and home restoration with the same level of commitment that downtown has received for the past 40 years and stated Fayetteville Street needs an initial \$25 million dedicated for public improvements and incentives to reduce the areas double digit employment, crime rate, to increase homeownership rate and provide valuable skills training for the neighborhood residents.

Heather Merwin, of 117 Hibee Street, urged Council to reconsider and to provide funding for Alliance of AIDS Services--Carolina.

Mayor Bell closed the public hearing.

Mayor Pro Tempore Cole-McFadden made comments on behalf of the Durham Youth Council who requested funding for 1) Teen Counsel Center; 2) Peer Education Center; 3) Shelter for Homeless Youth; and 4) Full-service Teen Center.

June 5, 2006

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to receive public comments on the proposed FY 2006-2007 budget and proposed FY 2007-2012 Capital Improvement Plan and related fee schedules was approved at 10:12 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: ROWENA AVENUE – FROM NORTH PROPERTY LINE OF TAX MAP 370-2-2 TO NORTH PROPERTY LINE OF TAX MAP 367-3-3 – MINI ASSESSMENT ROLL

Engineering Manager Lee Murphy made comments on this item.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

A. Property of Lucy V. Englehard

MOTION by Council Member Stith seconded by Council Member Catotti to find that the property of Lucy V. Englehard, identified as 3217 Rowena Avenue, PIN #0840-06-26-9480, has benefited from the sewer main improvement and to confirm the assessment in the original amount of \$7,033.08 was approved at 10:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

B. Property of James D. Sprouse and Erica M. Taecker

MOTION by Council Member Stith seconded by Council Member Catotti to find that the property of James D. Sprouse and Erica M. Taecker, identified as 3134 Rowena Avenue, PIN #0840-05-18-7745, has benefited from the sewer main improvement and to confirm the assessment in the original amount of \$3,525.00 was approved at 10:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

C. Property of Waylon E. and Sonya McFarland, Jr.

MOTION by Council Member Stith seconded by Council Member Catotti to find that the property of Waylon E. and Sonya McFarland, Jr., identified as Rowena Avenue, PIN 0840-05-18-6989, has benefited from the sewer main improvement and to confirm the assessment in the original amount of \$1,163.49 was approved at 10:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

D. Property of Ulysses Clark and Amina Khalil

June 5, 2006

MOTION by Council Member Stith seconded by Council Member Catotti to reconsider the assessment against the property of Ulysses Clark and Amina Khalil, identified as 3127 Rowena Avenue, PIN #0840-05-19-9025, and to find that the property has benefited from the sewer main improvement and to confirm the assessment in the original amount of \$1,175.00;

To reconsider the assessment against the property of Ulysses Clark and Amina Khalil, identified as 3127 Rowena Avenue, PIN #0840-05-19-9018, and to find that the property has benefited from the sewer main improvement and to confirm the assessment in the original amount of \$376.00; and

To reconsider the assessment against the property of Ulysses Clark and Amina Khalil, identified as 3125 Rowena Avenue, PIN #0840-05-19-9105, and to find that the property has benefited from the sewer main improvement and to confirm the assessment in the original amount of \$2,444.00 was approved at 10:14 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: APPROVAL OF MERCHANDISE-BASED RETAIL INCENTIVE GRANT TO STUDIO 10, INC. – FAYETTEVILLE STREET

Chris Dickey, of the Office of Economic Development, made comments on this item.

Mayor Bell opened the public hearing.

Ralph McKinney, of 3106 Winston Place, made comments on this item.

Mayor Bell closed the public hearing.

MOTION by Council Member Stith seconded by Council Member Catotti to receive public comments on the Merchandise-Based Retail Incentive Grant to Studio 10, Inc.;

To authorize the City Manager to execute a contract with Studio 10, Inc. for merchandise base improvement project in the amount of \$7,388; and

To authorize the City Manager to modify the contract before execution provided that modifications do not increase the dollar amount of the contract and the modifications are consistent with the general intent of the existing version of the contract was approved at 10:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

SUBJECT: PLAN AMENDMENT—ROXBORO ROAD PROFESSIONAL OFFICE II (A06-05) – ROBERT ANDERSON, BARTON DEVELOPMENT GROUP - EAST SIDE OF NORTH ROXBORO ROAD, SOUTH OF DENFIELD AND NORTH OF PACIFIC AVENUE ACROSS FROM FAIRFIELD ROAD

June 5, 2006

To receive public comments on the Roxboro Road Professional Office II Plan Amendment (A06-05);

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the Durham Comprehensive Plan from Office to Commercial.

Staff Recommendation: Approval

Planning Commission Recommendation: Denial, 7-5, based on increase in traffic.

Assistant City/County Planning Director Steve Medlin briefed Council on the plan amendment. He noted staff is recommending approval based on its justification and meeting the criteria from plan amendments and the Planning Commission recommended denial primarily concerned with increase in traffic.

Mayor Bell opened the public hearing.

Dr. Tracey Waters, of 4210 N. Roxboro Street, made comments in opposition to the plan amendment requesting that the land use designation remain the same.

Dr. Danny Lloyd, of 4206 N. Roxboro Road, spoke in opposition to this plan amendment. He noted if retail is allowed on this property, it would affect the parking, traffic and the character of the development from what was presented to him when he brought the property. He urged Council to deny this plan amendment.

Dr. Kevin Matthews, of 4210 N. Roxboro Road, spoke in opposition to the plan amendment due to parking concerns and it was presented as a professional center.

A representative of the applicant spoke in support of plan amendment from office to commercial. He noted that he doesn't anticipate any large increase in traffic; the request is appropriate with plan amendments and urged Council to approve this request.

Mayor Pro Tempore Cole-McFadden raised a concern with the traffic on North Roxboro Road.

Assistant City/County Planning Director Steve Medlin reminded Council that this item is a plan amendment and not a rezoning request. With a rezoning request, staff would provide a more detailed analysis of the actual traffic information.

Council Member Clement noted he would like to have additional information on this request.

For clarification, Assistant City/County Planning Director Steve Medlin outlined the purpose of this item noting the applicant is requesting to move the designation from office designation to commercial to allow for a rezoning to be brought forward with a recommendation of compliance with the adopted Comprehensive Plan.

June 5, 2006

Council Member Clement noted he would like to have more information from individuals who spoke in opposition to the plan amendment with staff reporting back with an analysis.

Assistant City/County Planning Director Steve Medlin noted at this point issues raised by the property owners are not matters that staff has the ability to provide any additional guidance. The issue is between private property owners as relating to agreements that were entered into at the time of the purchase/rental agreement with the applicant.

Mayor Pro Tempore Cole-McFadden asked Dr. Lloyd what was his understanding when he entered into negotiations for the building.

Dr. Danny Lloyd replied it was a professional medical park.

Mayor Bell closed the public hearing.

City Attorney Blinder made comments on what Council can consider when voting on this item.

MOTION by Council Member Stith seconded by Council Member Woodard to receive public comments on the Roxboro Road Professional Office II Plan Amendment (A06-05);

To adopt a resolution to change the Land Use designation on the Future Land Use Map of the Durham Comprehensive Plan from Office to Commercial **FAILED** at 10:39 p.m. by the following vote: Ayes: None. Noes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Absent: None.

**SUBJECT: PLAN AMENDMENT-EVALUATION AND ASSESSMENT REPORT
AMENDMENTS (A06-09)**

To receive public comments on the Evaluation and Assessment Report Plan Amendment (A06-09); and

To adopt a resolution to change the policies of the Durham Comprehensive Plan and to change the Future Land Use Map in accordance with the map.

Staff Recommendation: Approval

Planning Commission Recommendation: Approval, 12-0, based on direction from the City Council.

Assistant City/County Planning Director Steve Medlin briefed Council on this item.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

June 5, 2006

MOTION by Council Member Catotti seconded by Council Member Woodard to receive public comments on the Evaluation and Assessment Report Plan Amendment (A06-09); and

To adopt a resolution to change the policies of the Durham Comprehensive Plan and to change the Future Land Use Map in accordance with the map was approved at 10:40 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

Resolution #9363

[ITEM ADDED TO AGENDA]

SUBJECT: HIGHWAY TRUST FUND LOOP FUNDING

Transportation Manager Mark Ahrendsen made comments on this item. He outlined the purpose of resolution and noted stakeholders have been trying to develop legislation to help explore alternative funding sources to advance transportation improvement projects both in this area and across the state. The concern is that the bill as written would take some funds from the loop funds that are provided from the Highway Trust Fund legislation to help fund gaps in new turnpike projects and could reduce the funding available to Durham and other cities to construct their loop projects.

Joe Milazzo, Executive Director of the Regional Transportation Alliance, made comments on the two loop projects—East End Connector and 540 West Project and the bills.

Council Member Catotti read the Resolution Expressing Opposition of the Durham City Council to proposed legislation that could diminish Highway Trust Fund Loop Funding for the record.

A motion was made by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to adopt the resolution.

A friendly amendment was made by Council Member Woodard to change the wording in the resolution from could to would. Friendly amendment was accepted.

Mayor Bell requested that the following individuals receive a copy of this resolution: Durham Delegation, Bill sponsors, House and Senate Representatives, Turnpike Authority, Toll Road Authority, Department of Transportation and the Secretary of Transportation.

Council held discussion on the gas tax cap and further cooperation with RTA.

MOTION by Council Member Catotti seconded by Mayor Pro Tempore Cole-McFadden to adopt a resolution as amended expressing the opposition of the Durham City Council to proposed legislation that would diminish Highway Trust Fund Loop Funding as amended was approved at 10:54 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Stith and Woodard. Noes: None. Absent: None.

June 5, 2006

Resolution #9357

There being no further business to come before the City Council, the meeting was adjourned at 10:54 p.m.

Linda E. Bratcher
Deputy City Clerk

D. Ann Gray, CMC
City Clerk